Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1017

TUG OCEAN PRINCE, INC. and RED STAR TOWING & TRANSPORTATION CO.,

Petitioners,

v.

UNITED STATES OF AMERICA and PITTSTON MARINE TRANSPORT CORP.,

Respondents.

BRIEF OF RESPONDENT PITTSTON MARINE TRANSPORT CORP. IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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The Court of Appeals, after a thorough review of the Trial Court's findings, found that the order granting the petitioners limitation of liability should be vacated. In reaching this determination the Court accepted the fact findings of the District Court except where they were inconsistent or clearly erroneous.

Petitioners argue that the Court of Appeals has disregarded the requirement that "privity and knowledge" must be that of managing officers of the corporation.

In its decision the Court stated that "Red Star had a non-delegable duty to provide a qualified master and crew for the intended voyage" (A8).

In deciding that Red Star had not met this requirement the Court cited authorities for the well-established principles which were followed:

> "Incompetence of the navigator makes the vessel unseaworthy."
>
> "The more restricted the operation in which a vessel is engaged the greater will be the degree of control which the corporate owner will be required to exercise over master, crew and subordinate shoreside employees."
>
> "The burden to prove seaworthiness and the exercise of due diligence to make the ship seaworthy is upon the vessel owner or operator."

The Court of Appeals discussed all of the circumstances which were associated with the casualty and properly concluded:

> "The grounding of the Barge New London did not occur because of a single separate incident. It was the accumulation of acts, all of which originated with Red Star's management, resulting in an easily forseeable casualty."

When commenting on the failure to appoint a captain and the fact that Reimer had no experience on the Hudson, the District Court found this to be "an unfortunate set of circumstances". The Court of Appeals properly found

that Red Star's management alone was responsible for this "unfortunate set of circumstances" (A13, 14).

Petitioners argue that the Court of Appeals is in direct conflict with the Fourth Circuit in its treatment of The Temple Bar, 137 F2d 293 (4th Cir. 1943). It is respectfully submitted that the Court did not reject The Temple Bar, *supra*, but properly distinguished it when considering the fact pattern that was presented in the matter before this Court.

The rule established by The Lady Pike, 88 U.S. (21 Wall.) 1 (1874) and followed in *Atlee v. Northwestern Union Packet Company*, 88 U.S. (21 Wall.) 389 (1875) is still the applicable standard for river piloting.

The issues between petitioners and the respondent involve the application of familiar principles of law to the facts of the case. Those principles were properly applied by the Court of Appeals. No important conclusion of law or policy is involved.

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

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